



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 97-016

COUNTIES:
Operation of an Assisted Living Facility

Honorable Baron S. Heintz
State's Attorney, Mercer County
Mercer County Courthouse
Aledo, Illinois 61231

Dear Mr. Heintz:

I have your predecessor's letter wherein he inquired whether a county may build, maintain and operate an assisted living facility in which the rental units would be leased to persons who are fifty-five years of age or older, without regard to income. For the reasons hereinafter stated, it is my opinion that although counties have not been granted the express authority to operate an assisted living facility, a county may operate such a facility pursuant to its power to establish and maintain a home for the aged if residency in the facility is limited to persons who are at least fifty-five years of age and who are also infirm or chronically ill.

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Based upon the information we have been supplied, it is my understanding that Mercer County is proposing the development of an assisted living facility; that is, a facility "* * * for persons who need assistance with the activities of daily living, personal care or some health care but do not need 24-hour care." As envisioned, the facility would consist of a twelve unit apartment complex with residency available to persons fifty-five years of age or older without regard to income. Monthly rental fees would be intended to cover a noon meal served in the facility's dining room, light housekeeping twice a month, free on-site laundry, basic cable television and all utilities with the exception of telephone service. In addition, it is anticipated that the facility's residents would have access to the same programs and services offered to the county nursing home's residents, such as physical therapy, barber and beauty shop services and minivan trips. Against this background, the issue is whether a county may build, maintain and operate such an assisted living facility.

It is well established that non-home-rule counties possess only those powers that are expressly granted to them by the constitution or by statute, together with those powers which are necessarily implied therefrom to effectuate the powers that have been expressly granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) A review of the provisions of the Counties Code (55 ILCS 5/1-1001

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et seq. (West 1996)) and of other pertinent statutes has failed to disclose any express authority for counties to maintain assisted living facilities. Therefore, if a county is to provide the type of facility envisioned in this program, the authority to do so must be found elsewhere.

In this regard, sections 5-22001 and 5-22002 of the Counties Code (55 ILCS 5/5-22001 and 5/5-22002 (West 1996)) respectively provide:

"Establishment and maintenance of homes for the aged. Any county is authorized to purchase or construct, equip, operate and maintain one or more homes for the aged.

In order to finance any such home, any county may borrow money and issue and sell bonds in such amount or amounts as it may determine, and may refund and refinance the same from time to time whenever the public interest so requires."

"The county board, as the case may be, may make such reasonable rules and regulations regarding the management and control of any home for the aged as may be required to accomplish the purposes of the Division subject to and not in conflict with the provisions of the Nursing Home Care Act, as heretofore or hereafter amended.

Any such home shall be available for the use of any aged person who is able, through private means or public subsidy or combination thereof, to pay the prescribed rental and to meet any rules or regulations necessary for the operation of such home."
(Emphasis added.)

The term "aged" is not defined in the Counties Code, nor is it a term which admits of only a single, popularly

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understood meaning. In interpreting the language of a statute which has not previously been construed, it is proper to consider similar enactments, even though not strictly in pari materia.

Board of Education v. A.C & S, Inc. (1989), 131 Ill. 2d 428, 468-69; Freberg v. Board of Trustees of Firemen's Pension Fund (1970), 128 Ill. App. 2d 369, 375-76.

The term "aged" is defined as follows in section 3.05 of the Illinois Act on Aging (20 ILCS 105/3.05 (West 1996)):

"'Aged' or 'Senior citizen' means a person of 55 years of age or older, or a person nearing the age of 55 for whom opportunities for employment and participation in community life are unavailable or severely limited and who, as a result thereof, has difficulty in maintaining self-sufficiency and contributing to the life of the community."

Although, at one time, the term "aged" was commonly considered to be synonymous with the age of sixty-five (see City of Chicago v. Heffron (1952), 346 Ill. App. 248, 255-56), I believe that the definition of that term in section 3.05 of the Illinois Act on Aging more accurately reflects current trends in addressing issues relating to aging. Therefore, in the absence of a contrary definition clearly applicable to section 5-22001 of the Counties Code, this definition may appropriately be employed in construing the provisions thereof.

While I have concluded that persons who are at least fifty-five years of age may be considered "aged", for purposes of division 5-22 of the Counties Code, reference to other statutes

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shows that the age of residents is not intended to be the sole criterion for eligibility for residence in a county home for the aged. Under the language of section 5-22002, county boards are authorized to adopt rules and regulations necessary to carry out the purposes of division 5-22 of the Counties Code (55 ILCS 5/5-22001 et seq. (West 1996)), which rules or regulations are "* * * subject to and [may] not * * * conflict with the provisions of the Nursing Home Care Act * * *." Therefore, it is necessary also to review the provisions of the Nursing Home Care Act (210 ILCS 45/1-101 et seq. (West 1996)) to determine what additional qualifications may be imposed upon residency in a county home for the aged.

The Nursing Home Care Act, inter alia, provides a comprehensive scheme of regulation for long term care facilities and the employees thereof. Section 1-113 of the Act (210 ILCS 45/1-113 (West 1996), as amended by Public Act 90-14, effective July 1, 1997) defines the term "long term care facility" to include:

"* * * a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22 of the Counties Code, or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for 3 or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and

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intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act. 'Facility' does not include the following:

* * *

"

(Emphasis added.)

As used in the Nursing Home Care Act, the phrase "personal care" means "* * * assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual, who is incapable of managing his person whether or not a guardian has been appointed for such individual." (210 ILCS 45/1-120 (West 1996).)

The language of section 1-113 of the Nursing Home Care Act, when read in conjunction with the provisions of division 5-22 of the Counties Code, indicates that it was the intent of the General Assembly that county homes for the aged provide "personal care" services to persons who are not only of advanced age, but who are also infirm or chronically ill, and thus in need of such services. The language in question was added by the Nursing Home Care Reform Act of 1979 (see Public Act 81-223, effective March 1, 1980). (Ill. Rev. Stat. 1979, ch. 111½, par. 4151-113.) Prior to that enactment, homes for the aged were separately defined under "AN ACT in relation to the licensing and regulation of homes for the maintenance, care, or nursing of persons who are ill, aged or physically infirm" (see Ill. Rev. Stat. 1977, ch.

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111½, par. 35.16) without reference to infirmity or chronic illness.

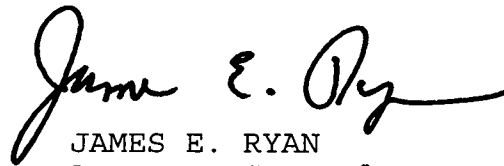
The term "infirm" is not defined in the Act. It is well established, however, that undefined statutory terms must be given their ordinary and popularly understood meaning. (People v. Bailey (1995), 167 Ill. 2d 210, 229.) In this regard, one of my predecessors has stated that the term "infirm" is generally understood to refer to that which is "[n]ot firm or sound, physically; weak; frail; or persons, of poor or deteriorated vitality, esp., as a result of age; feeble; as an *infirm* body; an *infirm* constitution.'" (1950 Ill. Att'y Gen. Op. 219, 220; quoting Webster's 2nd International Dictionary.)

Your predecessor stated that residency in the projected assisted living facility would be limited to "* * * persons who need assistance with the activities of daily living, personal care or some health care but do not require 24-hour care." Based upon the commonly understood meaning of the term "infirm", it is my opinion that such an assisted living facility would provide services to the infirm, within the meaning of section 1-113 of the Nursing Home Care Act. Thus, if the county adopts rules or regulations limiting admission to the proposed facility to persons over the age of fifty-five who, because of infirmity or chronic illness, require assistance with "personal care", as defined by statute, then it is my opinion that the facility could

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properly be operated as a "home for the aged" under division 5-22
of the Counties Code.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is fluid and extends to the right with a long horizontal stroke.

JAMES E. RYAN
Attorney General